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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/533,361	03/22/2000	Beatrice Toumi	6388-0501-0	9261

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EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/533,361	Applicant(s) TOUMI ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,17-22 and 24-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,17-22 and 24-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of amendment filed on September 20, 2006. Claim rejection made under 35 U.S.C. § 103(a) in view of Sebag et al. (WO 98/03155) in view of Sidhu (US 4963353) is withdrawn in view of claim amendment made by applicants. Claim rejection made under 35 U.S.C. § 103(a) in view of Fox (US 5879684) in view of Sebag et al. (WO 98/03155) is also withdrawn in view of the claim amendment. Claim rejection made under 35 U.S.C. § 103(a) in view of Fox in view of Kumar et al. (US 5468477) is maintained for reasons of record.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 17-22, 24-47 are rejected as unpatentable under 35 U.S.C. § 103 (a) over Fox (US 5879684) in view of Kumar et al. (US 5468477).

Fox teaches a method to eliminate wrinkles and tighten skin by topically applying a gel composition comprising Vegetensor, a plant protein complex, and algal extract. See col. 2, lines 50 – 67. See instant claims 21, 22, 35, and 20. The protein complex is said to be “filmogeneous and is well suited to use in creams, lotions, and the like”. See *Id.* The reference further teaches, “[o]nce applied, the dried product retracts, thereby lending the tensor, or skin tightening, effect”. See *Id.* The reference teaches using the composition on the areas where signs of aging show earliest. See col. 7, lines 34 – 48.

While Fox teaches using a film-forming agent (hydroxyethyl methacrylate homopolymers) that is water impermeable and highly pliable, the reference fails to teach the grafted polymethylsiloxanes of instant formula (IV).

Art Unit: 1617

Kumar teaches vinyl-silicone graft polymers that are useful in making cosmetic compositions. See col. 4, line 50 – col. 6, line 16. In the mercapto functional silicone compound shown in col. 8, line 30 – col. 9, line, when R1, G5, and G6 of the Kumar polymer is C1-4 alkyl, the prior art meets G1 of instant formula (IV); R2 and R4 of the Kumar polymer being C1-10 alkylene meets G2 of instant formula (IV) when $n = 1$; G2 and G2 of the prior art is vinyl polymeric segments consisting essentially of polymeric free radically polymerizable monomer, meet G3 and G4 of instant claim. Example 2 teaches copolymer using mercapto functional silicone (PS850), acrylic acid (anionic monomer of G3 of instant claim) and n-butyl methacrylate (hydrophobic monomer of G4 of instant claim). The reference teaches that the polymer is used in cosmetics having active ingredients such as “skin-improvers”. See col. 25, lines 10-29. The vinyl-silicone copolymers are used to make a gel composition, and said to also have “excellent film-forming capability”, exhibiting a superior water-resistance, oil-resistance, and other characteristics required for cosmetic films”. See col. 17, line 52 – col. 18, line 24. The reference also teaches using preferably 0.2-30 % by weight of vinyl-silicone copolymer to realize the desired cosmetic film property. See col. 43—50. See also col. 17, lines 56-66; col. 19, lines 4-13. See instant claims 19, 25, 26, and 31-33.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Fox by substituting the film-forming agent with the vinyl-silicone graft polymers of Kumar et al. because the latter teaches that the vinyl-silicone polymer renders “excellent film-forming capability”, superior resistance to water and oil, and otherwise suitable for cosmetic films. The skilled artisan would have had a reasonable expectation of successfully producing a

skin tightening composition with superior or equivalent film-forming effect on the skin because both Fox and Kumar teach making cosmetic gel, lotion, and cream formulations.

Oath/Declaration

Declaration filed on September 20, 2006 was fully considered but is not persuasive.

The declaration shows a comparison of tensioning effect of Composition A containing VS80 by 3M, which is representative of the instant claim, and comparative compositions B-D, each comprising copolymers containing polysiloxane and non-silicone moieties. Composition A is said to provide an absolute value of "close to 1 %" of retraction of stratum corneum, while Composition B provided close to 0%, Composition C, less than 0.3 % and Composition D, close to 0 %. Declarant states that VS80 by 3M possessed significantly higher tensioning effect than the comparative polymers.

The data in the declaration is not commensurate with the scope of the claim. Composition A contains 7 % of VS80 by 3M, while claim 1 does not require any weight amount of the polymer. Furthermore, examiner notes that data in the declaration is vague, as that the percentage of retraction is "a value close to 1 %", and does not disclose the specific actual value.

Response to Arguments

Applicant's arguments filed on September 20, 2006 have been fully considered but they are not persuasive.

Examiner maintains the rejection made in view of Fox in view of Kumar for reasons of record. Fox teaches a method of treating wrinkles and tightening skin by topically applying a composition comprising a vegetable based tensor agent and a film-forming agent. Kumar teaches that the particular film forming agents used in the present invention has "excellent film-forming capability" and superior water-resistance, oil-resistance, and other characteristics required for cosmetic films, and renders a skilled artisan a motivation to replace the film forming agent of Fox. The remaining arguments are based on the data in the declaration filed on September 20, 2006, which have been discussed above.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

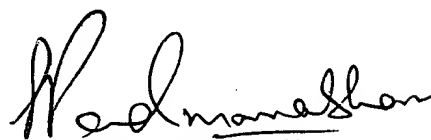
Art Unit: 1617

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina C. Yu
Patent Examiner


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER